IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2446 of 2005

Seema Vishal Thadhani
(M/s.Seema Wines) .. Petitioner

versus

The Municipal Commissioner,
Mumbai & Anr. .. Respondents

...

Ms.Veena Thadani for the petitioner.
Mr.A.Y. Sakhare a/w Vinod Mahadik for the respondents.

CORAM : D.G. KARNIK, J

DATED : 17th July 2006.

ORAL JUDGEMENT :-

1. The short question that arises for consideration in this petition is whether a licence u/s.394 of the Mumbai Municipal Corporation Act 1888 (for short 'the MMC Act") is required to be obtained

for the purpose of sale of liquor which is served in sealed bottles in a retail liquor shop, not for consumption on the retailer's premises.

2. Petitioner holds a licence in form FL II issued to her under section 34 of the Bombay Prohibition Act, 1949. Under the terms of the licence, the licencee is allowed to sell foreign liquor in sealed bottles in Shop no.15, Atur Park, Shiv-Parvati Co-operative Housing Society, Sion Trombay Road, Chembur, Mumbai 400 071. Under Rule 38 of the Bombay Prohibition Rules, the liquor is to be sold only in corked bottles, sealed or capsuled. Rule 35 prescribes that the person in charge of the licenced premises shall not permit the liquor to be consumed on the licensed premises. In pursuance of the said licence, petitioner sells foreign liquor in corked bottles, sealed or capsuled, only and the bottles are to be carried by the purchaser holding a valid licence for being consumed at his home or elsewhere but not in the petitioner's shop. Petitioner has also obtained a licence under the Shops & Establishments Act for the purpose of running of the shop for sale of liquor. Petitioner however has not obtained any licence, commonly known as a

"Health Licence" under section 394 of the MMC Act.

3. On 5th July 2005, respondents issued a notice to the petitioner stating that the petitioner was illegally carrying on trade of keeping and selling liquor without a valid licence from the Commissioner as required u/s.394 of the MMC Act. By the said notice, petitioner was called upon to discontinue trade of selling of liquor in sealed bottles failing which legal proceedings would be instituted against her without further warnings. That notice is impugned in this petition.

4. Learned counsel for the petitioner submitted that licence u/s.394 of the MMC Act is not required to be obtained for sale of liquor not served for consumption in the shop premises. Sub-section(1) of section 394 of the MMC Act reads as under :-

> 394 (1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall
>
> (a) Keep, or suffer or allow to be kept, in or upon any premises.
>
> (i) any article specified in Part I of Schedule M; or,

(ii) any article specified in Part II of Schedule M, in excess of the quantity along with any other article or articles specified in that Schedule, such other maximum quantity as may be notified by the Commissioner) of such article which may at any one time be kept in or upon the same premises without a licence;

(b) keep, or suffer or allow to be kept, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule M;

(c) keep, or suffer or allow to be kept, in or upon any premises, horses, cattle or other four-footed animals for sale, for letting out on hire or for any purpose for which any charge is made or any remuneration is received, or for the sale of any produce thereof;

(d) keep or use, or suffer or allow to be kept or used, in or upon any premises, any article (or animal) which, in the opinion of the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, the same is, or is proposed to be, kept or used or suffered or allowed to be kept or used;

(e) carry on or allow or suffer to be carried on, in or upon any premises;

(i) any of the trades specified in Part IV of Schedule M, or any process or operation connected with any such trade;

(ii) any trade, process or operation, which, in the opinion of the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in

> which, or the conditions under which, the same is, or is proposed to be carried on:
>
> (f) carry on within or use or allow to be used any premises for, the trade or operation of a career.

5. Admittedly, petitioner is not required to obtain licence under clauses (a) to (d) of sub-section (1) of section 394 of the Act. According to the learned counsel for the respondent, however the petitioner is required to obtain a licence under sub-clause (i) of clause (e) of sub-section (1) of section 394. Sub-clause(i) of clause (e) of sub-section (1) of section 394 prescribes that no person shall carry on in or upon his premises any of the trade specified in Part IV in Schedule-M or in any process of operations connected with such trade. Thus, the licence under sub-clause (i) of clause (e) of sub-section (1) of section 394 would be required only in respect of trades specified in Part IV of Schedule-M of the MMC Act. Relevant entry in Part IV of Schedule-M of the MMC Act reads as follows :

> Trades or processes or operations connected with traders which shall not be carried out or allowed to be carried on in or upon any premises without a licence :
> .....
> .....
> Keeping liquor or Toddy shop, where

liquor or Toddy is sold or served for consumption on the premises.
.....
(other entries, being not relevant, are not reproduced)

6. Plain reading of the relevant entry in Part IV of the MMC Act would show that the licence u/s.394 would be required to be obtained in respect of premises used for keeping of liquor or toddy shop, where liquor or toddy is sold or served for consumption on the premises. Licence u/s.394 of the MMC Act is not required merely for the purpose of keeping of a liquor or toddy for sale but not for consumption on the premises. The licence would be required to be obtained where liquor or toddy is sold or served for consumption on the premises. The words "where liquor or toddy is sold or served" are qualified by the words "for consumption on the premises". In other words, where liquor or toddy is sold in sealed bottles for being carried outside and not for consumption on the premises, the licence u/s.394 of the MMC Act is not required. The words "for consumption on the premises" qualify both the entire phrase "where liquor or toddy is sold or served". Where liquor is sold in corked or capped

and sealed bottles for being carried away, for being consumed anywhere other than the shop premises, licence u/s.394 of the MMC Act is not required to be obtained.

7. In view of what is stated above, the notice issued to the petitioner by the respondents is clearly illegal as the petitioner is not selling the liquor for consumption in her shop.

8. For these reasons, the petition is allowed. Impugned notice is quashed and rule is made absolute in terms of prayer clause (b).

(D.G. KARNIK, J)